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ABSTRACT

This paper examines the practice of search and seizure from a legal perspective. All issues concerning lawful or unlawful search and seizure, whether in a public school or otherwise, are predicated upon the Fourth Amendment to the United States Constitution. The terms "search," "seizure," "probable cause," "reasonable suspicion," and "exclusionary rule" are defined and provide a necessary vocabulary in this analysis. Examples are used to give concrete meaning to various practices, such as strip searches, drug searches by urine tests, and weapons searches. These particular search scenarios, which can take place in a school setting, spawn the most litigation. Court decisions have helped to provide precise definitions and statements allowing fair adjudication of cases. Such statements establish guidelines in cases where students' legitimate expectations of privacy and personal security are to be respected, should school officials act on perceived (and, perhaps, unsubstantiated) problems involving drugs or violence. Sometimes, however, in weapons searches, the immediacy of a school board's actions for student and school personnel safety is well justified. (RT)

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Kenneth T. Murray

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Search and Seizure

By Kenneth T. Murray, J.D., Ph.D.

Public school students are under the control of the school authorities while at school, on their way to school, on their way home from school, at a school function off of the school premises, or while they otherwise are presumed by law to be at school.[i] In addition, the principal or the principal's designee may search a student's effects in a locker or other storage area upon reasonable suspicion that a prohibited or illegally possessed substance or object is contained therein. The term "reasonable suspicion" was defined by the United States Supreme Court in 1985 in a case involving the search of a female student's purse.[ii] When drug paraphernalia was discovered, the school authority proceeded to search the student's purse and found marijuana. When subsequent criminal charges for possession of a controlled substance were brought against the student, her attorney challenged the search as one without "probable cause" and therefore in violation of the Fourth Amendment prohibition of unreasonable search and seizure. The case made its way to the United States Supreme Court and the Court found the search to be legal saying that since the school authorities act *in loco parentis* of the students, the strict requirement of "probable cause", which is required of most police searches, will unduly hamper the school authorities in maintaining proper discipline within the schools. Therefore, said the Court, school authorities need only "reasonable suspicion" in order to conduct a legal search of a student. They then continued to define reasonable suspicion as the following. 1) The search must be reasonable at its inception. That is to say the school authorities must have reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. 2) The search must be reasonable in scope. The measures adopted must be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.[iii]

All issues concerning lawful or unlawful search and seizure, whether in a public school setting or otherwise, are predicated upon the Fourth Amendment to the United States Constitution which states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[iv]

Subsequent to that Amendment, all challenges concerning searches of property or persons must be analyzed within the parameters set forth therein.

From Black's Law Dictionary certain terms used within the Fourth Amendment or coined subsequent thereto have been defined. Definitions notwithstanding, however, these terms (and court interpretations of them) have been the source of substantial litigation.

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1. **Search** "Search" consists of the looking for or seeking out that which is otherwise concealed from view. Visual observation which infringes upon a person's reasonable expectation of privacy constitutes a "search" in the Constitutional sense.

In *Doe v. Renfrow*, 631 F.2d 91 (1980), the Seventh Circuit Court of Appeals held that a non-intrusive "search" by drug-trained dogs was, in fact, not a **search** under the Fourth Amendment, but preliminary to a search . However, a Federal District Court, that same year held such a dog search to be unconstitutional as teams of drug sniffing dogs violated the students' privacy right based upon the threatening presence of the animals. *Jones v. Latexo Independent School District,* 499 F. Supp 223 (E.D. Texas 1980). Finally, in *Horton v. Goose Creek Independent School District*, 677 F.2d 471 (1982), the Fifth Circuit Court of Appeals found that drug-trained dogs which were closely sniffing students, violated the Fourth Amendment because it was an unwarranted invasion to the students' privacy rights. It did state, however, that it is permissible for such dogs to search students' automobiles and lockers. The rule for school personnel who are considering the use of drug-trained dogs is that such is probably permissible so long as the dogs are not allowed to get up close and personal with the students.

2. **Seizure**: "Seizure" is the taking possession of property. Such also occurs when an officer arrests an individual (ie. Seizing the person), or whenever he restrains the individual's freedom to walk away.

3. **Probable Cause:** "Probable Cause" has been defined as "reasonable cause;" (not to be confused with "reasonable suspicion" defined below) having more evidence for than against. A reasonable ground for belief in certain facts. A set of probabilities grounded in the factual and practical considerations which govern the decisions of reasonable and prudent persons and is more than mere suspicion but less than the quantum of evidence required for conviction.

4. **Reasonable Suspicion:** "Reasonable Suspicion" is such suspicion which will justify an officer, for Fourth Amendment purposes, in stopping a defendant in a public place. It is the quantum of knowledge sufficient to induce ordinary prudent and cautious men under like circumstances to believe criminal activity is at hand. It must be based upon specific and describable facts, which, taken together with rational inferences from those facts, reasonably warrants such intrusion.

5. **Exclusionary Rule**: The "Exclusionary Rule" was developed by the courts in order to vindicate a defendant's Fourth Amendment rights if such were abridged. The rule commands that where evidence has been obtained in violation of the Fourth Amendment protections stated above, that tainted evidence may not be used against the defendant at trial.

A recent Sarasota County case overturned an adjudication of delinquency for a student after she was found in possession of rock cocaine.[v] A female assistant principal searched a female student when it had been reported that the student might be carrying a knife in school for the purpose of participation in a fight. The assistant principal searched the girl's purse but found no knife. She then felt inside a small pocket on the side of the purse and felt a plastic bag. Upon inspection she discovered the bag to contain a few pieces of rock cocaine. The Court of Appeals for the Second District of Florida held the search to go beyond the scope necessary to find the knife. The assistant principal admitted that she felt no lumps or bulges in the purse but inspected the side pocket anyway. The Court said that "while school safety may readily justify a search for weapons, the student's interest in privacy should preclude a scavenger hunt after the basic search produced no weapons." The Court continued to explain their rather thin logic by saying that the drugs were not in plain sight nor found during the basic search for the weapon. The drugs were, in fact, found during an "extended search" in a side pocket where quite plainly no weapon could be located.

Note that the "school official exception" to the probable cause requirement for warrant less searches allows only school officials to search a student upon "reasonable suspicion." If the School Resource Officer is involved in

the search or if the school official is acting at the behest of a law enforcement officer, then probable cause is needed in order for there to be subsequent criminal prosecution of the offending student (*A.J.M. v. State*). On a more reasonable note, the case *State of Florida v. Roger Dean Sizemore, Jr.*, involved a search of a student's automobile by a school dean while at least in the company of the School Resource Officer. In this case the dean of discipline and the SRO were returning to school together in the patrol car when they spotted two students sitting in a parked truck in the back school parking lot. As they approached the truck the dean observed the student sitting in the passenger side of the truck actively hiding something under the front seat. Because this area of the parking lot had been wrought with drug problems, weapons, trespassers and thefts, the dean asked the students to step out of the vehicle and then proceeded to search the truck. His search uncovered a marijuana smoking pipe and a cigarette pack with two packages of marijuana in it. Since the defendant owned the truck, he was charged with criminal possession of marijuana. The defendant challenged the search for lack of probable cause. He depended on the holding in *A. J. M. v. State* (discussed above) that because the SRO was present during the search, he "acquiesced" in the search and therefore, the search needed probable cause. However, the Court found the *A. J. M.* rule not to apply and found that the dean acted reasonably and responsibly.

The *T.L.O.* decision was based upon the premise that school officials act *in loco parentis* and, therefore, have a more "parent-like" authority over the students. A recent case upheld a search by a Florida school principal of an automobile on school property but owned and driven by a non-student. *(State of Florida v. Eric Roderick Griffin)*. In this case a high school principal saw a car with which he was not familiar located in the faculty parking lot and because he had experienced problems with non-students appearing at dismissal time, he took steps to identify the owner of the car. In that effort, he asked the School Resource Officer to check the tag number. Without further communication with the officer, the principal removed a jacket from the unlocked car in his search for identification and in the jacket found a bag of cannabis. He then notified the officer. Shortly thereafter two men approached the car (one of whom was the defendant) and were taken to the school office by the SRO. At that time the principal further searched the car finding more drugs and drug paraphernalia. As a result of the search by the principal, the defendant was criminally charged. When the defendant challenged the search (and the fruits thereof) the Court found that the officer neither directed nor participated in the search of the vehicle (thus eliminating the need for probable cause). The principal was justified at the inception of the search as he merely was looking for identification and was acting out of concern for the safety and well-being of the students. Because the search was justified at it's inception and did not exceed it's scope, the Court held that the search was reasonable and lawful.

Florida law requires the school to post, in a place readily seen by the students, a notice that the students' lockers or other storage areas are subject to search upon reasonable suspicion.[vi] This statute was upheld in a Pinellas County case where such a locker search revealed stolen property which discovery led to a criminal charge of grand theft being filed against the student.[vii] As it happened the defendant in this case was already on probation which was revoked by the Court. The defendant attempted to challenge the above locker search statute but with no success. School personnel should note that the student search statute also specifically states that it shall not be interpreted to prohibit the use of metal detectors or specially trained animals in the course of a search which is otherwise proper.[viii]

Litigious Searches

Typically in a public school setting certain search scenarios spawn the most litigation. Among those scenarios are strip searches, urine tests for drugs and searches for weapons.

Strip Searches

When students are involved in strip searches by school personnel, the courts usually rule against the school personnel not because strip searches are, per se, illegal, but because they are usually found to be unreasonable in the

circumstances. One such case occurred in New York when a school principal and the school's security coordinator searched a young male student which search did, in fact, turn up illegal drugs.[ix] In this case a teacher observed a student entering the restroom twice within an hour, spending only five to ten seconds in the restroom each time. This particular student had been under observation by school officials for about six months for possibly dealing drugs. During this same day, he had also been seen eating lunch with another student who had likewise been under suspicion. The teacher reported the information to the school's security coordinator who in turn reported the matter to the principal. The principal brought the boy to the office and in the presence of the boy's dean and the principal, the security coordinator searched the boy. That search revealed thirteen glassine envelopes located in the boy's wallet. The coordinator then required the boy to strip. A vial containing nine pills of illegal substance were found. When the search was challenged, the Court held that although the school officials had the right to maintain discipline and safety, the boy's privacy rights simply outweighed the interest of the school in keeping the school drug-free. The Court deemed the strip search unreasonable because the limited information available to the principal was insufficient cause for such an intrusive search.

Another New York case was decided in 1977 by a Federal District Court. In this case [x]some public school teachers strip searched an entire fifth grade class in search of a missing $3.00 reported by another student. For obvious reasons the Court held the search to be too intrusive and too broad for the trivial object of the search.

Finally from the Eleventh Circuit Court of Appeals comes a very recent case involving student strip searches and personal 42 U.S.C. §1983 liability (discussed in Chapter 10). In the case of *Jenkins v. Talladega City Board of Education*, two elementary female students were strip searched twice in pursuit of a missing $7.00[xi]. As the old saying goes "it is easier to show reasonableness if the search turns up the contraband." Unfortunately for the school and the school personnel in this case no contraband was found in either of the two strip searches. Two second-grade girls were accused by another second-grader of stealing $7.00 and hiding the money in a backpack. The teacher of the class searched the backpack but found no money. When questioned, the two eight-year-old girls accused each other and then decided to accuse another student, a young boy. At this point the teacher had all three students in the hallway when another teacher (the school music teacher) happened along and took charge of the situation. She had all three students remove their shoes and socks but still no stolen money was found. The music teacher then decided to include the school guidance counselor in this travesty. The guidance counselor and the music teacher dismissed the boy back to class evidently because they thought him wrongly accused. They then took the two girls to the rest room where they made each girl disrobe. Still no money was found. After putting their clothes back on, the girls were taken to the office of the principal who interrogated them in the office. Evidently the principal quickly lost interest in this game so the girls were again placed in the charge of the music teacher and the guidance counselor. Unbelievable as it is, these two again took the girls to the restroom and made them disrobe a second time. Of course no stolen money was found. As could be expected the parents of the two girls went besirk and demanded a school board investigation which concluded that the music teacher and the guidance counselor "committed a gross error in judgement." Despite the superintendent's recommendation for dismissal, neither of the two received any serious sanctions.

Drug Searches by Urine Tests

The subject of drug searches through urine testing has become a popular topic for litigation within the past few years. So far the Courts have been unreceptive to mandatory drug tests for students unless the tests are directly related to participation in athletics. This judicial aversion to student drug testing is illustrated by a case which occurred in Arkansas and was decided by the Federal District Court in 1985.[xii] In this case some students were in a school restroom when another student entered to the odor of marijuana. She reported the incident and all three students were interviewed separately. As a result, all three students were required to submit to a urine test. At the

specified time each girl was escorted into a restroom and observed by a female school administrator while the student urinated into a vial. One of the students tested positive and subsequently withdrew from school. She later brought an action against the school for allegedly violating her Fourth Amendment rights. The Court determined that the girl would have been expelled anyway on the basis of the testimony of the other student but held that the school did, indeed, violated her Fourth Amendment right against unreasonable search and seizure. The Court found the forced urine test to be an unreasonable search because a positive indication from the test only indicated that the student had at some time ingested some marijuana-like substance. The test could not determine if the student had possessed the drug at school, used it at school or even was under the influence of it while at school.

In another case a New Jersey school board adopted a policy whereby each student was required to undergo a physical examination prior to entering school each Fall.[xiii] The purported reason for the examination was to "identify the existence of any physical defects, illnesses, or communicable diseases." Part of the examination included a test of each student's urine to detect the presence of any controlled substances, unauthorized prescription drugs or alcohol. When this requirement was challenged the school board wisely defended by saying that the examination was not a violation of the Fourth Amendment rights of the students because no sanctions were attached to any positive indication from the urine test -- merely that the parents of the students would be notified and the student referred for appropriate treatment. Because the school treated such drug or alcohol use as a departure from normal health and not a criminal matter, the school board argued that their policy was not subject to Fourth Amendment restrictions. Unfortunately, the Court disagreed stating that the policy violated the students' legitimate expectations of privacy and personal security in violation of the requirements contained within the Fourth Amendment.

As mentioned above, the courts have been more receptive to mandatory drug tests for student athletes if the school has a rational basis for requiring the test. However, in one Texas case a school district policy requiring students in grades six through twelve to submit to urine testing prior to participating in any extra-curricular activity was found to be unacceptable.[xiv] In this case the Court struck down the school district policy because, the Court said, the school district had not demonstrated that a drug problem existed within it's student body but rather was responding to a perceived problem of general societal abuse. Because the Court found no compelling, or even, substantial governmental interest on the part of the school, the privacy expectations of the students won out.

In an Indiana case, a school district recognized that a drug problem existed within its student body and sought to develop a rational means with which to deal with it.[xv] In this case the school district developed a drug testing program for all its interscholastic athletes. The athletes were required to complete a consent form prior to competition and if they failed to submit such form, they were excluded from competition. Athlete names were drawn randomly for students to take the test. Furthermore, the tests were administered in a manner to insure a genuine urine sample while reasonably respecting the modest of the student athlete. No school or criminal sanctions were imposed for a positive test indication and there were follow-up tests to insure accuracy. The most severe sanction was exclusion from the athletic program. The policy was challenged in Federal District Court which upheld the school district so the appeal went to the Seventh Circuit in Chicago. The Court found that athletes have a somewhat limited expectation of privacy because their various sports activities involve a certain amount of "communal undress." Furthermore, said the Court, the school has a strong interest in preventing drug abuse and this policy represented a rational solution to achieve that interest. As a result, the Court upheld the policy finding no violation of the restrictions contained with the Fourth Amendment.

A similar case occurred in Oregon where a school district determined that several of their student athletes had suffered drug-related injuries or illness and that some of the athletes were even participating in drug-culture organizations.[xvi] In this policy each athlete would be drug-tested at the beginning of the season and then randomly thereafter. The policy was challenged on the basis that the tests were performed without "individualized suspicion".

The Federal District Court held that while the school district needed neither a warrant nor individualized suspicion, it was required to demonstrate a compelling governmental interest. On balance, the Court held that the school district did, in fact, demonstrate such a compelling interest by showing that there had been specific drug-related athletic injuries and problems, that student athletes serve as role models for the other students and that this program was implemented only after other, less intrusive attempts, had failed. This case made its way to the United States Supreme Court which, evidently, decided to set straight the law of the land concerning mandatory drug testing of student athletes. In upholding this school district policy, the Supreme Court said that the "reasonableness of a search is judged by balancing the intrusion on the individual's Fourth Amendment interests against the promotion of legitimate governmental [not compelling] interests. The Court easily found a legitimate governmental interest and stated the "the importance of deterring drug use by all this Nation's schoolchildren cannot be doubted. Moreover this [school district policy] is directed more narrowly to drug use by athletes, where the risk of physical harm to the user and other players is high"[xvii]

More recently the United States Supreme Court expanded the rights of public schools to test students for illegal drugs. Relying heavily on the above discussed U.S. Supreme Court case, *Vernonia School District v. Acton* (515 U. S. 646 (1995)), the U.S. Supreme Court reversed the United States Court of Appeals' for the Tenth Circuit holding that the drug testing policy enacted by the Board of Education of Pottawatomie County (School District) to test all students involved in extra curricular activities was unconstitutional. In *Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Lindsay Earls et al.*, the Court ruled that such drug testing is not an impermissible violation of the Fourth Amendment.[xviii]

The balancing of students' rights versus the governmental interest has been at issue in several student rights cases (*Tinker v. Des Moines* 393 U.S. 503; *New Jersey v. T.L.O.* 469 U. S. 325; *Vernonia School District v. Acton* 515 U. S. 646). In *Tinker* the Court held that "school children... do not shed their constitutional rights... at the school house gate". *New Jersey v. T.L.O.* established that the standard of reasonableness applies in public school searches of students and that students enjoy a reasonable expectation of privacy in their personal belongings brought to school. The *Vernonia* Court allowed suspicionless drug testing of student athletes due to "special needs" such as a community history of abuse and the risk to the athlete (also the athletes were viewed as "the leaders of the drug culture"), as well as the administrative nature of the search (positive tests simply resulted in non- participation, and not referral to law enforcement nor punitive school sanctions). The District Court granted judgment in favor of the School District. The Court of Appeals reversed holding the policy in violation of the Fourth Amendment concluding that a school "must demonstrate that there is an identified drug abuse problem among a significant number of those subject to the testing such that testing that group of students will actually redress its drug problem." The U.S. Supreme Court reversed the decision of the Court of Appeals finding the drug testing policy constitutional.

The school district which administers all public schools in rural Tecumseh, Oklahoma adopted the Student Activities Drug Testing Policy. This policy requires middle and high school students to submit to drug testing prior to participating in any extracurricular activity, as well as random testing during participation periods, and agree to be tested at any time given reasonable suspicion. In practice the policy was enforced for competitive extracurricular activities such as academic team, show choir, and marching band. Lindsay Earls was a member of music activities while Daniel James sought to participate in Academic team. Earls and James together with their parents brought a 42 U.S.C. §1983 action against the school district and "challenged the policy both on its face and as applied to their participation in extra curricular activities. They cited violation of the Fourth Amendment as applied through the Fourteenth Amendment asserting that the School District failed to identify a special need for such testing and that the "drug testing policy neither addressed a proven problem nor promises to bring any benefit to the students or the school.")

The Supreme Court addressed the following issues as they applied to this case -- the Fourth Amendment exception for suspicionless searches of students, the nature of the privacy interest of the students and character of the governmental intrusion, and the "nature and immediacy of the government's concern and efficacy of the policy in meeting them."

The collection and testing of urine samples indicate a Fourth Amendment search (*Vernonia*). The Court cited *Skinner v. Railway Labor Executives' Assn.*, 499 U.S. 602(1989) and *National Treasury Employees v. Von Raab*, 489 U.S. 656 (1989) in differentiating the probable cause requirement of the Fourth Amendment from one of reasonableness, and the nature of administrative searches given the governmental interest in the safety of driving trains or U.S. Customs officials enforcing drug trafficking laws. The court also cited *Vernonia* quoting *T.L.O.* that such probable cause and warrant requirements would interfere with swift discipline in the schools. Suspicionless drug testing of athletes was upheld in *Vernonia*. The privacy rights of students were balanced with the governmental interest in promoting safety of student athletes. It has been sustained that schools have a responsibility to promote discipline and safety of students. In *Vernonia*, student athletes were found to have a lesser expectation of privacy citing communal dressing and showers in the locker room. Earls et al contended that students in other extracurricular activities enjoy a greater expectation of privacy than those athletes sharing a locker room. The Court, though with a dissenting opinion, found that this distinction was not governing but rather gave more weight to the school's "custodial responsibility and authority." The Court further stated that some of these competitive extracurricular activities such as show choir also result in occasional travel and communal undress.

In *Skinner*, the Court held that urination is "an excretory function traditionally shielded by great privacy" (*Skinner*, 489 U.S. at 626). At issue was the method of urine collection and utilization of the results. In this case, students were allowed to urinate behind the closed stall doors while a monitor listened for normal sounds of urination (In Vernonia, the boys used urinals). This, method was found to be a "negligible" intrusion. The policy at hand maintains that the results be kept in a file separate from the student's other files and only released on a "need to know" basis. Earls et al. argued that the records were not kept in a confidential manner citing an instance in which the choir director carelessly left a list of student's medications (which must be submitted for the drug testing) where other students could easily view the confidential information. The Court did not find that this increased the character of the intrusion As with the instances in *Vernonia*, the results of the drug test were used in an administrative, not criminal manner. The policy at hand allowed positive-testing students to continue participating in extracurricular activities upon parent notification, drug counseling and submitting to further drug tests. After a second positive test, the policy required suspension from all extracurricular activities for fourteen days, completion of four hours of substance abuse counseling and submission to monthly drug tests. Only following the third positive test was student participation in extracurricular activities suspended for the remainder of the school year or 88 days.
Concerning the methodology of the collection of the urine and the management of the test results the Court held that the privacy intrusion was "not significant."

The Court then addressed the "nature and immediacy of the government's concerns and the efficacy of the policy in meeting them. The Court referred to results published in the report Department of Health and Human Services, Monitoring the Future: National Results on Adolescent Drug use, overview of Key Findings (2001) which stated an increase in the number of 12th grade students using illicit drugs from 48.4% in 1995 to 53.9% in 2001. "Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school" stated the Court. The Court also dismissed Earls' et al. argument for testing based on individualized suspicion as the Court found that the policy would be less intrusive to potential target groups. The Court held that testing students in extracurricular activities was an effective method of addressing the concerns of "preventing, deterring, and detecting drug use" although allowing that the instances in *Vernonia* were a "closer fit" to the requirement of finding an identified drug problem "fueled by the role model effect of the athletes".

Therefore the Court found the drug testing policy at Tecumseh to be constitutional but cautioned that "Within the limits of the Fourth Amendment, local school boards must assess the desirability of drug testing school children. " In upholding the constitutionality of the policy, we express no opinion as to its wisdom." It should also be noted that this was a 5-4 decision, with the dissenting opinion arguing some of the interpretations of *Vernonia* and questioning the benefit of testing so many students "most of whom are probably not involved in drug use", while barring students who may benefit from positive interactions within extracurricular activities. In *Vernonia* there was a documented drug abuse problem, even with athletes, and the policy addressed the issue. In *Tecumseh*, while there were instances of drugs on campus, the district reported that drugs were not a major problem. The dissenting opinion also questioned applications of *Skinner* and *Von Raab*, as well as *Chandler*, and quoted a 1928 opinion: "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." (*Olmstead v. United States* (277 U.S. 438, 495)). "That [schools] are educating the students for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." (*West Virginia Bd. of Ed v. Barnette*, 319 U.S. 624, 637(1943)).

Weapons Searches

In cases where public schools are searching for weapons, at least the Third District Court of Appeals seems to have relaxed the constitutional requirements slightly. A case originating in Dade County was reported in which the school district program of random classroom searches for weapons was found by the Circuit Court to be unconstitutional (*In the Interest of J.A.*).[xix] That program involved members of a search team, dressed in uniforms which identified them as search team members, entering classrooms unannounced with hand-held electronic metal detectors. In those random searches they would scan each student for weapons and any which were found were turned over to the Dade County School District police (Dade County School District is one of five school districts within Florida to have it's own police force). If a student refused to be searched, he or she would be sent to the office for automatic suspension. Students found to be in possession of items illegal under Florida law were arrested and subject to prosecution. The teams were supposed to choose schools and classrooms randomly but the Circuit Court found that such was not always the case. Some schools in Dade County were never searched while others were searched more than twenty times. On December 16, 1994, J.A. was a student at Jackson Senior High School sitting in his class when the search team arrived and informed the students that they were going to be searched. J.A.'s jacket was hanging on the side of his chair. The search team observed students passing the jacket to a shelf in the back of the room and when the team searched the jacket a gun was found. J.A. claimed ownership of the jacket but denied that he owned the gun. He was arrested for carrying a concealed firearm (in violation of Florida law) as well as having a gun on public school premise (also a violation of Florida law). Both of these offenses are felonies within the State. The County Circuit Court found that J.A. had an expectation of privacy within his jacket and that any search conducted by the school district in this manner must meet the *probable cause* standard. Furthermore, the Court held that the search was in violation of the Fourth Amendment and suppressed the evidence found (under the exclusionary rule) in the delinquency petition filed against J.A..

Fortunately for society the Court of Appeals for Florida's Third District recognized the extreme danger to all persons resulting from weapons within the school environment. The Court applied the "balancing test" to determine if J.A.'s expectation of privacy outweighed the School Board's concern for the safety and well-being of the other students as well as school personnel. School children, said the Court, have a reasonably lessened expectation of privacy than the other members of society. The Court then acknowledged that in recent years, school disorder had increased with drug use and violent crimes becoming major social problems. In the years prior to the implementation of this search policy, Dade County Public Schools reported both homicides and aggravated batteries

as well as the confiscation from students of a very high number of weapons, including handguns. "The immediacy of the Board's concern", said the Court, "for student safety and the safety for all school personnel is well justified."[xx]

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1. F.S.A. §232.25
2. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
3. Id.
4. U.S. Const. Fourth Amendment
5. *T.J. v. State of Florida*, 538 So.2d 1320 (2nd DCA 1989).
8. F.S.A. §232.256(3)
9. *Dennis Woolley v. State of Florida*, 459 So.2d 1101 (2nd DCA 1984).
10. F.S.A. §232.256(4)
11. *People v. D.*, 34 N.Y. 2d 483, 315 N.E. 2d 466 (1974).
12. *Bellnier v. Lund*, 438 F. SUPP. 47 (N.D.N.Y 1977)
13. *Jenkins v. Talladega City Board of Education*, 115 F.3d 821 (11 cir. 1997)
14. *Anable v. Ford*, 653 F.Supp. 22 (W.D. Ark. 1985)
15. *Odenheim v. Carlstadt-East Regional School District*, 510 A.2d 709 (N.J.Super.Ch.Div.1985)
16. *Brooks v. East Chambers Consolidated Independent School District*, 730 F. SUPP. 759 (S.D.Tex.1989)
17. *Schaill v. Tippecanoe County School Corporation*, 864 F.2d 1309 (7thCircuit 1988)
18. *Acton v. Veronia School District*, 796 F. SUPP.1354 (D.Or. 1992)
19. *Veronia School District v. Acton*, 515 U.S. 646 (1995)
20. *Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Lindsay Earls et al.*. Certiorari to the United States Court of Appeals for the Tenth Circuit United States Supreme Court No. 0 1-332 536 U.S. (2002)
21. *State v. J.A.*, 679 So.2d 316 (Third DCA 1996)
22. Id.

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